Pawa ak Ajah v Chung Kok Chiang @ Chong Kok Kiong & Anor

HIGH COURT (SIBU) — ORIGINATING SUMMONS NO 24-100 OF 2000
CLEMENT SKINNER J
31 JANUARY 2002

Native Law and Custom *— Land dispute — Native title — Granting of an irrevocable power of attorney in favour of first defendant who is non-native duly registered — Power of attorney exercised to execute memorandum of transfer — Whether the power of attorney valid and not contrary to s 8 of the Sarawak Land Code — Whether the memorandum of transfer invalid if the power of attorney was void — Whether the assistant registrar's act of accepting and registering the power of attorney amounted to an official act under s 189 of the Sarawak Land Code — Sarawak Land Cose ss 8, 189*

Limitation *— Adverse possession — Whether the plaintiff's claim time barred under item 91 and/or 93 of the Schedule to the Limitation Ordinance*

The plaintiff is the administratrix and widow of one Nyanau anak Bunya (deceased) ('Nyanau'). Prior to his death, Nyanau had executed an irrevocable power of attorney in favour of the first defendant authorizing him to deal with the said land. The power of attorney was duly registered at the Sibu Land Registry Office on the same day it was executed. The first defendant, acting pursuant to the powers granted to him under the power of attorney, executed a memorandum of transfer purporting to transfer the said land to the second defendant. The plaintiff submitted that the power of attorney granted by Nyanau in respect of the said land, which is native area land, in favour of the defendant, who is non-native, was invalid and absolutely null and void as being contrary to s 8 of the Sarawak Land Code ('the Code'). If the power of attorney was void, the plaintiff contended that the memorandum of transfer was also invalid. It was contended by the defendants that the power of attorney was perfectly valid and did not offend s 8 of the Code because the first defendant did not acquire any rights or priviliges over the said land. Rather, it was contended, the first defendant was merely authorized and appointed by Nyanau to do certain acts on his behalf in relation to the said land. It was also contended that the power of attorney as that granted to the first defendant is an instrument provided and prescribed by s 188 of the Code. Furthermore, it was contended that the assistant registrar's act of accepting and registering the power of attorney under s 189 of the Code amounted to an official act which, by s 114(e) of the Evidence Act 1950, the court was enjoined to presume as having been 'regularly performed'. It was also contended by the defendants that the relevant period of limitation was that mentioned in item 91 and/or 93 of the Schedule to the Limitation Ordinance (Cap 49) Laws of Sarawak and therefore, the plaintiff's claim was time barred.

Held, allowing the plaintiff's claim with costs and granting the declarations sought:

(1) It did not in law follow that s 188 was to be read as authorizing what was otherwise prohibited by another section in the Code. To do so would be to read s 188 in isolation and in total disregard to the other provisions in the same enactment and the intention behind the enactment. The general power given to a registered proprietor of land to appoint any person to act on his behalf in respect of his estate or interest in the same under s 188 of the Code was qualified by the express prohibition contained in s 8 of the Code where the land in question is native area land (see p 246E–G).

(2) Section 189 of the Code imposed a requirement for every power of attorney to be registered. There was nothing in s 189 of the Code to suggest that when accepting for registration a power of attorney, the registrar was under a duty to address his mind to the legality or validity of the same. The registrar performed a purely administrative function when he accepted a power of attorney for registration (see pp 246H–247A). The provisions of s 114(e) of the Evidence Act 1950 were quite irrelevant to the issue at hand. The plaintiff's attack against the validity of the power of attorney was on the ground that it was given in contravention of s 8 of the Code and having been given for an illegal consideration or object, it was invalid, null and void. These were matters unconnected with the administrative function performed by the registrar when registering the power of attorney (see p 247G–H).

(3) The word 'acquire' in the context in which it appeared in s 8 of the Code meant no more than to 'gain' or 'obtain' or 'exercise' rights and privileges over native area land. In following the approach taken by the appellate court in *Idris bin Haji Mohamed Amin v Ng Ah Siew* [1935] MLJ 257, the court decided that the intention of the Code was directed at prohibiting and preventing any person who was a non-native of Sarawak from acquiring any rights or privileges over native area land, except in the very limited circumstances permitted by the Code. Any agreement that was entered into which would result in such rights and privileges being enjoyed by a non-native was deemed to have been entered into for an illegal consideration and exposed the parties thereto to a penal sanction as well (see pp 249G, 251F–G).

(4) The rights which were comprised in the usual ownership of the said land had been acquired or gained or obtained or passed to the first defendant, a non-native. This had been made possible by virtue of the power of attorney. From the extent of the rights and privileges which had been granted over the said land under the power of attorney to the first defendant, it was apparent that practically every right and privilege except the nominal ownership in the said land had been parted with by Nyanau. Thus, although

the power of attorney stated that the first defendant acts on behalf of Nyanau in exercising those rights, in reality they had passed to and were exercised and enjoyed by the first defendant. The power of attorney was a colorable devise entered into to facilitate an evasion of the Code and thus deemed to be entered into for an illegal consideration under s 8(b) of the Code (see p 253A–D); *Law Tanggie v Untong ak Gantang & Anor* [1993] 2 MLJ 530, *Dato' Haji Nik Mahmud bin Daud v Bank Islam Malaysia Bhd* [1998] 3 MLJ 393 and *Wee Tian Peck v Teoh Poh Tin* [1995] 1 MLJ 446 distinguished.

(5) The plaintiff's claim was not barred under item 91 and/or 93 of the Schedule to the Limitation Ordinance because the plaintiff's action did not come under either of those items. The plaintiff's action came under item 112 of the Schedule to the Limitation Ordinance since, although the plaintiff sought various declarations, her action was essentially for possession of the said land. The time limited for bringing a suit to which item 112 applied was 12 years and it began to run when the possession of the defendant became adverse to the plaintiff. On the facts, the plaintiff's action was brought well within the time allowed (see pp 254H–255D).

Per curiam:

The failure of the defendants to expressly plead limitation in opposing the plaintiff's claim did not prevent the defendants from raising the issue. No pleadings were delivered in this action as the plaintiff commenced her action by way of an originating summons. However, in his affidavit, the first defendant had stated that the plaintiff's action was statute barred. That was sufficient to entitle the defendants to take the point on limitation in these proceedings (see p 254F–H).

[Bahasa Malaysia summary

Plaintif adalah pentadbir dan balu seorang yang bernama Nyanau anak Bunya (si mati) ('Nyanau'). Sebelum kematiannya, Nyanau telah menyempurnakan satu surat kuasa wakil yang tidak boleh batal ke atas nama defendan pertama yang memberi kuasa kepadanya untuk berurusan dengan tanah tersebut. Surat kuasa wakil itu telah didaftarkan di Pejabat Pendaftaran Tanah Sibu pada hari yang sama ianya disempurnakan. Defendan pertama, bertindak selaras dengan kuasa-kuasa yang telah diberikan kepada beliau di bawah surat kuasa wakil tersebut, telah menyempurnakan satu memorandum pindahmilik yang bermaksud untuk memindahmilik tanah tersebut kepada defendan kedua. Plaintif berhujah bahawa surat kuasa yang diberikan oleh Nyanau berhubung tanah tersebut, yang mana adalah tanah kawasan anak watan, atas nama defendan, yang bukannya seorang anak watan, adalah tidak sah dan secara mutlaknya batal dan

A tak sah kerana bertentangan dengan s 8 Kanun Tanah Sarawak ('Kanun tersebut'). Jika surat kuasa wakil itu batal, plaintif menegaskan bahawa memorandum pindahmilik tersebut adalah juga tidak sah. Adalah ditegaskan oleh defendan-defendan bahawa surat kuasa wakil itu adalah sesungguhnya sah dan tidak melanggari s 8 Kanun tersebut kerana defendan pertama tidak memperolehi sebarang B hak atau keistimewaan-keistimewaan ke atas tanah tersebut. Sebaliknya, telah ditegaskan, defendan pertama telah hanya diberi kuasa dan dilantik oleh Nyanau untuk melakukan beberapa perbuatan bagi pihaknya berhubung dengan tanah tersebut. Adalah juga ditegaskan bahawa surat kuasa wakil tersebut sepertimana yang diberikan kepada defendan pertama merupakan satu suratcara yang C ditetapkan dan diperuntukkan di bawah s 188 Kanun tersebut. Lagipun, telah ditegaskan bahawa tindakan penolong pendaftar menerima dan mendaftarkan surat kuasa wakil tersebut di bawah s 189 Kanun tersebut sama seperti satu tindakan rasmi yang mana, melalui s 114(e) Akta Keterangan 1950, mahkamah telah memerintahkan D untuk menjangkakan sebagai telah 'regularly performed'. Adalah juga ditegaskan oleh defendan-defendan bahawa tempoh had masa yang relevan adalah yang disebut di dalam perkara 91 dan/atau 93 Jadual kepada Ordinan Had Masa (Bab 49) Undang-Undang Sarawak dan oleh itu, tuntutan plaintif telah dihalang oleh masa.

E **Diputuskan**, membenarkan tuntutan plaintif dengan kos dan memberikan hak pengisytiharan yang dipohon:

(1) Adalah tidak diikuti di sisi undang-undang bahawa s 188 hendaklah dibaca sebagai memberi kebenaran apa yang sebaliknya dilarang oleh satu seksyen yang lain di dalam Kanun F tersebut. Untuk melakukan sedemikian adalah dengan membaca s 188 secara berasingan dan tidak menghiraukan sama sekali peruntukan-peruntukan lain dalam enakmen yang sama dan niat di sebalik enakmen itu. Kuasa am yang diberikan kepada tuanpunya tanah berdaftar untuk melantik sesiapa untuk bertindak bagi pihaknya berhubung dengan harta pesakanya atau G kepentingan di dalamnya di bawah s 188 Kanun tersebut adalah menjadi layak kerana peruntukan nyata yang terkandung di dalam s 8 Kanun tersebut di mana tanah yang dipersoalkan adalah tanah kawasan anak watan (lihat ms 246E–G).

(2) Seksyen 189 Kanun tersebut mengenakan syarat untuk setiap H surat kuasa wakil didaftarkan. Tidak terdapat apa-apa di dalam s 189 Kanun tersebut untuk menyarankan bahawa ketika menerima sesuatu surat kuasa wakil untuk pendaftaran, pendaftar tersebut adalah di bawah kewajipan untuk menumpukan pemikirannya kepada sifat keesahan atau kesahihannya. Pendaftar melaksanakan satu fungsi pentadbiran semata-mata apabila I beliau menerima sesuatu surat kuasa wakil untuk pendaftaran (lihat ms 246H–247A). Peruntukan-peruntukan s 114(e) Akta Keterangan 1950 adalah agak tidak relevan kepada isu yang

ditangani. Serangan plaintif terhadap keesahan surat kuasa wakil adalah atas alasan bahawa ianya telah diberikan berlanggaran dengan s 8 Kanun tersebut dan kerana telah diberikan pertimbangan atau tujuan yang tidak sah di sisi undang-undang, ianya adalah tidak sah dan batal. Ini adalah perkara-perkara yang tiada hubungan dengan fungsi pentadbiran yang dilaksanakan oleh pendaftar ketika mendaftarkan surat kuasa wakil tersebut (lihat ms 247G–H).

(3) Perkataan 'acquire' dalam konteks di dalam yang mana ianya terdapat di dalam s 8 Kanun tersebut bermakna tidak lebih daripada untuk 'gain' atau 'obtain' atau 'exercise' hak dan keistimewaan ke atas tanah kawasan anak watan tersebut. Dalam mengikuti pendekatan yang diambil oleh mahkamah rayuan di dalam *Idris bin Haji Mohamed Amin v Ng Ah Siew* [1935] MLJ 257, mahkamah telah memutuskan bahawa niat Kanun tersebut adalah bertujuan untuk melarang dan menghalang sebarang orang yang bukannya anak watan Sarawak daripada memperolehi sebarang hak atau keistimewaan ke atas tanah kawasan anak watan itu, kecuali dalam keadaan-keadaan yang terhad yang dibenarkan oleh Kanun tersebut. Sebarang perjanjian yang dimasuki yang akan menyebabkan hak dan keistimewaan yang sedemikian dinikmati oleh seorang yang bukan anak watan adalah dianggap sebagai telah dimasuki untuk satu pertimbangan yang tidak sah dan mendedahkan pihak-pihak perjanjian tersebut kepada satu penal sanksi juga (lihat ms 249G, 251F–G).

(4) Hak yang yang terkandung di dalam pemilikan biasa tanah tersebut telah diperolehi atau didapati atau dipindahkan kepada defendan pertama, seorang bukan anak watan. Ini telah dijadikan berkemungkinan oleh surat kuasa wakil tersebut. Daripada hak-hak dan keistimewaan tersebut yang telah diberikan ke atas tanah tersebut di bawah surat kuasa kepada defendan pertama, ianya adalah jelas bahawa setiap hak dan keistimewaan kecuali hak pemilikan nominal di dalam tanah tersebut telah dipindahkan oleh Nyanau. Oleh itu, meskipun surat kuasa wakil menyatakan bahawa defendan pertama bertindak bagi pihak Nyanau dalam melaksanakan hak-hak itu, dalam realitinya, ianya telah diserahkan kepada dan dinikmati oleh defendan pertama. Surat kuasa wakil tersebut adalah sama seperti devis yang dimasuki untuk memudahkan kemasukan Kanun tersebut dengan itu dianggap telah dimasuki untuk satu balasan tidak sah di bawah s 8(b) Kanun tersebut (lihat ms 253A–D); *Law Tanggie v Untong ak Gantang & Anor* [1993] 2 MLJ 530, *Dato' Haji Nik Mahmud bin Daud v Bank Islam Malaysia Bhd* [1998] 3 MLJ 393 dan *Wee Tian Peck v Teoh Poh Tin* [1995] 1 MLJ 446 dibezakan.

(5) Tuntutan plaintif tidak dihalang oleh perkara 91 dan/atau 93 Jadual kepada Ordinan Had Masa kerana tindakan plaintif tidak terlingkung di bawah perkara-perkara tersebut. Tindakan plaintif adalah di bawah perkara 112 Jadual kepada Ordinan Had Masa

kerana, meskipun plaintif memohon pelbagai pengisytiharan tindakan beliau adalah secara pentingnya untuk pemilikan tanah tersebut. Tempoh masa yang dihadkan untuk memulakan sesuatu guaman kepada yang mana perkara 112 dipakai adalah 12 tahun dan ianya bermula daripada ketika pemilikan defendan menjadi bertentangan dengan plaintif. Berdasarkan fakta-fakta tindakan plaintif telah dimulakan jauh di dalam lingkungan masa yang dibenarkan (lihat ms 254H–255D).

Per curiam:

Kegagalan defendan-defendan untuk memplid dengan nyata tentang had masa bagi menentang tuntutan plaintif tidak menghalang defendan-defendan daripada membangkitkan isu tersebut. Tiada pliding disampaikan dalam tindakan ini kerana plaintif telah memulakan tindakan beliau melalui satu saman pemula. Walau bagaimanapun, di dalam afidavitnya, defendan pertama telah menyatakan bahawa tindakan plaintif adalah dihalang oleh masa. Itu adalah memadai untuk memberikan defendan-defendan hak untuk memperkatakan perkara had masa di dalam prosiding ini (lihat ms 254F–H).]

Notes

For cases on adverse possession generally, see 9 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1984–1998.

For cases on native land disputes generally, see 10 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 614–646.

Cases referred to

Borneo Housing Mortgage Finance Bhd v Bank Bumiputra Malaysia Bhd [1991] 2 MLJ 261 (refd)

Dato' Haji Nik Mahmud bin Daud v Bank Islam Malaysia Bhd [1998] 3 MLJ 393 (distd)

Eng Mee Yong & Ors v Letchumanan [1979] 2 MLJ 212 (refd)

Estate of Choong Lye Hin, Re, Decd; Choong Gim Guan v Choong Gim Seong [1977] 1 MLJ 96 (refd)

Idris bin Haji Mohamed Amin v Ng Ah Siew [1935] MLJ 257 (refd)

Law Tanggie v Untong ak Gantang & Anor [1993] 2 MLJ 530 (distd)

Malayan Banking Bhd v Agencies Service Bureau Sdn Bhd & Ors [1982] 1 MLJ 198 (refd)

Manang Lim Native Sdn Bhd v Manang Selaman [1986] 1 MLJ 379 (refd)

Wee Tiang Peck v Teoh Poh Tin [1995] 1 MLJ 446 (distd)

Legislation referred to

Constitution of India art 31(2)

Contracts Act 1950 ss 2(g), 24

Evidence Act 1950 s 114(e)
Land (Cassification) Ordinance 1948 s 8A
Limitation Ordinance Schedule, items 91, 93
Malay Reservations Enactment 1930 (Kelantan)
Re the Central Provinces and Berar Act [UK] 1939 FCR 18
Rules of the High Court 1980 O 15 r 6
Sales Tax Act [Punjab] 1948 s 2(ff)
Sarawak Land Code ss 8(a), 9, 188, 189, 190(3)
Stamp Act 1949 s 51(1)(d)

Polycarp Teo Sebom (*Teo Sebom Tan & Mahdi*) for the plaintiff.
Hii Hieng Sing (*Hii & Co*) for the defendants.

Clement Skinner J: By this originating summons, the plaintiff, Pawa ak Ajah, the administratrix and widow of one Nyanau ak Bunya (deceased) ('Nyanau') seeks by way of relief several declarations and orders relating to a piece of land owned by the late Nyanau known as Lot 42, Block 8, Lukut Land District, located at Mile 12½ Durin Kanowit Road, Kanowit ('the said land').

Before describing the particular relief sought by the plaintiff, it will be more convenient to first set out some background facts and details which from the affidavits filed on behalf of the parties and the submissions of their respective counsel, there does not appear to be any dispute about.

The late Nyanau died intestate on 20 February 1998 and at the date of his demise was the registered proprietor of the said land, the extract of title of which shows that it is classified as native area land. The letters of administration which was granted to the plaintiff on 15 June 1998 lists the said land as one of the assets of the estate of the late Nyanau. Some two years later, on 15 May 2000, the Probate Officer, Kanowit added to the list of assets of the estate the 'right to bring or to defend any action or other legal proceedings in the name and on behalf of the deceased or the deceased's estate'.

Some seven years before his death, in consideration of the payment of the sum of RM30,000 by the first defendant, Chung Kok Chiang @ Chong Kok Kiong, Nyanau executed an irrevocable power of attorney in favour of the first defendant on 16 October 1991 authorizing him to deal with the said land and all Nyanau's interests therein in the manner set out in the power of attorney which was registered at the Sibu Land Registry Office on the same day as it was executed as Instrument No L9305/91 ('the power of attorney'). It is not in dispute that the first defendant is a non-native of Sarawak (he is Chinese).

After her appointment as administratrix, the plaintiff lodged a caveat against the said land on 30 December 1999, to 'forbid the registration of any transfer or other dealings' affecting the said land. The plaintiff also, on 17 January 2000, wrote a letter to the first defendant notifying him of the death of Nyanau on 20 February 1998 and of her appointment as administratrix of the estate of the late Nyanau. She also informed him of the caveat she had lodged against the said land and made a demand for a return

of the title deed to the said land.

The plaintiff has to date not received the issue document of title to the said land back because the following events have taken place regarding the same:

(i) it appears that on 8 June 1997, the first defendant, acting pursuant to the powers granted to him under the power of attorney, executed a memorandum of transfer purporting to transfer the said land to one Regina Mado ak Bangau ('Regina Mado') who is the wife of the first defendant's nephew in consideration of the sum of RM30,000 allegedly paid by her to Nyanau;

(ii) on 27 January 2000, on the strength of the unregistered memorandum of transfer of the said land in her favour, Regina Mado lodged a caveat against the said land claiming to be 'entitled to or beneficially interested' therein. Her caveat was duly registered as Instrument No L927/2000 at the Land Office, Sibu.

On 31 July 2000, the plaintiff commenced this action. It is pertinent to mention here that on its commencement, the only defendant named therein was the first defendant. The following reliefs were claimed by the plaintiff (which I set out in summary):

(i) a declaration that the power of attorney executed by Nyanau was invalid, null and void;

(ii) that the Registrar of the Sibu Land Registry Office remove and/or deregister the power of attorney;

(iii) a declaration that the power of attorney had become invalid and void on the death of the said Nyanau on 20 February 1998;

(iv) a declaration that the unregistered memorandum of transfer dated 8 June 1997 was invalid, null and void;

(v) an order that the defendant do deliver the issue document of title to the said land to the plaintiff;

(vi) an order that the defendant do deliver vacant possession of the said land to the plaintiff and demolish a building erected on the said land for cock fighting purposes.

When the application came on for hearing, it became apparent to me from what was disclosed in the affidavits filed and the submissions of counsel for the plaintiff, that the issues raised between the plaintiff and the first defendant affected the position of Regina Mado because the plaintiff was seeking to have the power of attorney declared invalid and void, and any decision I may make thereon would definitely affect her claims to the said land as the unregistered memorandum of transfer which she relies upon for her entitlement to a beneficial interest in the said land was executed by the first defendant on the strength of the power of attorney, the validity of which is now being attacked in these proceedings. As she had a right to be heard on the matters in issue between the plaintiff and the first defendant, I acted under O 15 r 6 of the Rules of the High Court 1980 and ordered that she

be made a party in these proceedings and named as the second defendant, for all the cause papers to be served on her and that she be at liberty to file such affidavits as she may be advised to in these proceedings. In the event, she availed herself of that opportunity and filed two affidavits to oppose the plaintiff's application. She is represented by the same counsel who acts for the first defendant. A

With that, I now turn to the contentions of the parties. Before doing so, I should mention that the defendants raised several objections to the plaintiff's application which they did not pursue. Thus, the defendants had questioned the plaintiff's authority to commence these proceedings and also complained that the originating summons was defective as it does not require the plaintiff to appear in the action, nor does it expressly pray for the reliefs sought. But as I said, counsel for the defendants dropped these objections and so no more will be said about them. B C

The case for the plaintiff has been argued on the basis that the power of attorney granted by Nyanau in respect of the said land which is native area land, in favour of the first defendant, who is a non-native, is invalid and absolutely null and void as being contrary to s 8 of the Sarawak Land Code ('the Code'). D

The plaintiff says that it is void because the power of attorney conferred on the first defendant rights and privileges over the said land which he was prohibited by s 8 of the Code from acquiring. It was, therefore, granted or entered into for an illegal purpose, by reason whereof it constituted an invalid agreement within the meaning of s 2(g) of the Contracts Act 1950 and, therefore, void under s 24 of the same Act. E

The plaintiff goes on to contend that if the power of attorney was void and of no effect, the memorandum of transfer, which was executed by the first defendant on the strength of a void instrument, was incapable of passing on or conferring any interest in the said land to the second defendant by reason whereof she was not entitled to lodge any caveat against the same. F

The case for the defendants has been argued on the basis that the power of attorney was perfectly valid as it did not offend s 8 of the Code because what is prohibited by that section is the 'acquisition' of any right or privilege by a non-native over native area land, but the first defendant had not 'acquired' any rights or privileges over the said land by virtue of the power of attorney; he was merely authorized and appointed by the late Nyanau to do certain acts on his behalf in relation to the said land. According to counsel for the defendants, to 'acquire' means to become the 'owner of', but the first defendant had not, by virtue of the power of attorney, acquired any rights and privileges over the said land as if he had become the owner thereof. G H

The defendants go on to contend that if the power of attorney was valid, then the said land had been sold by Nyanau (through the first defendant as his attorney) prior to his death to the second defendant and as the first defendant had received the full purchase price of RM30,000 as attorney of Nyanau and executed and delivered to the second defendant the I

memorandum of transfer in respect of the said land, as well as hand over possession of the said land to her, Nyanau had divested himself of all his beneficial interest in the said land and had constituted himself as a bare trustee of the same for the second defendant. Therefore, according to counsel for the defendants, at the date of Nyanau's death, the said land did not form part of the assets of his estate, by reason whereof the plaintiff's action herein must fail. In support of the defendants' contention that Nyanau had constituted himself a bare trustee for the second defendant, counsel for the defendants relied on the case of *Borneo Housing Mortgage Finance Bhd v Bank Bumiputra Malaysia Bhd* [1991] 2 MLJ 261, the headnote of which reads:

> A registered owner, by executing a memorandum of transfer or upon receipt of the purchase price in full, had divested himself of all beneficial interest in the land and vested it in the bona fide purchaser. The registered owner becomes a bare trustee for the purchaser.

Another ground relied upon by the defendants to defeat the plaintiff's action is limitation. It is the contention of the defendants that the power of attorney is a contract made between the late Nyanau and the first defendant, and any action based on that contract must be brought within three years of its creation. According to counsel for the defendants, the relevant period of limitation is that mentioned in item 91 and/or 93 of the Sch to the Limitation Ordinance (Cap 49) Laws of Sarawak. Item 91 prescribes a period of three years to bring an action for 'the rescission of a contract', the time for which begins to run when the facts entitling the plaintiff to have the contract rescinded first became known to him. Under item 93, the time to bring an action 'for compensation for the breach of any contract, express or implied, not in writing and not herein specially provided for' is three years, the time for which begins to run when the contract is broken, or, where there are successive breaches, when the breach in respect of which the suit is instituted occurs, or where the breach is continuing, when it ceases.

It is the contention of the defendants that as this suit was commenced on 31 July 2000, more than three years had elapsed since the creation of the power of attorney on 16 October 1991 by reason whereof the plaintiff's claim is now barred by statute as limitation has set in.

Having set out the contentions of the parties, it is quite evident to me that the following issues arise for determination:

(i) does the power of attorney offend s 8 of the Code so as to render it invalid, null and void as having been entered into for an illegal consideration?;

(ii) if so, is the plaintiff prevented from obtaining the relief she seeks by reason of her action being barred by limitation?

With regard to the first issue, counsel for the defendants took two points. He first said that the power of attorney, such as that granted to the first defendant, is an instrument provided and prescribed by s 188 of the Code which reads:

> A registered proprietor of any estate or interest in land may by power of attorney in any usual form, and either in general terms or specially authorize and appoint any person on his behalf to execute transfers or other dealing therewith.

Counsel for the defendants then drew attention to s 189 of the Code which requires every power of attorney intended to be used for the purpose of effecting a dealing under the Code to be registered with the registrar at the relevant land office, and counsel further drew attention to the fact that the power of attorney had been duly registered at the Sibu Land Office registry by the assistant registrar on 16 October 1991 as Instrument No L9305/1991. Based on those facts, it was the submission of counsel for the defendants that if, as contended by the plaintiff, the power of attorney was invalid, null and void, the assistant registrar would have rejected it. Instead, according to counsel, by registering the power of attorney, its legality and validity had been recognized and the assistant registrar's act in accepting and registering the power of attorney amounted to an official act, which, by s 114(e) of the Evidence Act 1950 the court is enjoined to presume as having been 'regularly performed' and, therefore, according to counsel, for all purposes, the power of attorney was correctly registered and its validity cannot be called into question by anyone.

I must at once register my dissent to the arguments of counsel for the defendants. In the first place, while it is true to say that s 188 of the Code recognizes that a registered proprietor of land may authorize and appoint any person on his behalf to deal with his estate or interest in land, it does not in law follow that the section is to be read as authorizing what is otherwise prohibited by another section of the code because to do so would be to read s 188 in isolation and in total disregard to the other provisions in the same enactment and the intention behind the enactment. In this regard, useful reference can be made to the salutary advice of Gwyer CJ in *Re the Central Provinces and Berar Act* (1939) FCR 18 at p 42 where he said:

> A grant of power in general terms standing by itself would no doubt be construed in the wider sense; but it may be qualified by other express provisions in the same enactment, by the implications of the context, and even by considerations arising out of what appears to be the general scheme of the Act.

Thus, it is my view that the general power given to a registered proprietor of land to appoint any person to act on his behalf in respect of his estate or interest in the same under s 188 of the Code is qualified by the express prohibition contained in s 8 of the Code where the land in question is native area land.

In the second place, the proposition that by accepting for registration the power of attorney, the assistant registrar had recognized its legality and validity is, with all respect to counsel, untenable. Section 189 of the Code imposes a requirement for every power of attorney to be registered with the registrar if it is intended to be used for the purpose of effecting a dealing under the Code. There is nothing in the section, whether by express words or by implication, to suggest that when accepting for registration a power of

attorney, the registrar is under a duty to address his mind to the legality or validity of the same so that it can be said, as counsel for the defendants has said, 'if the power of attorney was null, invalid and void, the Assistant Registrar of the Sibu Land Registry Office would have rejected it.' In my judgment, the registrar performs a purely administrative function when he accepts a power of attorney for registration. And in relation to any instrument that is executed by an attorney which is presented for registration to the registrar, only a very limited duty is imposed on him by s 190(3) of the Code which reads:

> The Registrar, before registering any instrument executed by an attorney, may require proof that the power of attorney under which the attorney purported to act was still in force at the date of the execution of the instrument.

But it will be noticed that the duty imposed on the registrar to enquire about the validity of the power of attorney is only at that time when any instrument executed by an attorney is presented for registration, and not when the power of attorney itself is presented for registration.

In my judgment, there is in law very little difference between the function performed by the registrar in accepting a caveat for registration and when he accepts a power of attorney for registration. And it has been held that in accepting a caveat for registration, a registrar's role is purely administrative; that is what Lord Diplock had to say on the matter in the much cited case of *Eng Mee Yong & Ors v Letchumanan* [1979] 2 MLJ 212, (at p 214) although he was there referring to the registrar's function under the provisions of the National Land Code 1965.

In the third place, I find the argument of counsel for the defendants to the effect that because the registrar performs an official act when he registers a power of attorney which, by reason of s 114(e) of the Evidence Act 1950 ('the Act'), is to be presumed to have been regularly performed, the validity of the power of attorney cannot be questioned quite unacceptable. It is my view that the provisions of s 114(e) of the Act are quite irrelevant to the issue at hand. Here, although the plaintiff is seeking to have the power of attorney declared as invalid and to have the same deregistered, she does not seek to do so on the ground that the power of attorney has become registered as a result of some administrative act wrongfully or incorrectly performed by the registrar. If that were the case, then it is possible that the provisions of s 114(e) of the Act may become relevant. Here, the plaintiff's attack against the validity of the power of attorney is on the ground that it was given in contravention of s 8 of the Code, and having been given for an illegal consideration or object, is invalid, null and void, which are matters unconnected with the administrative function performed by the registrar when registering the power of attorney.

I next consider the crucial question of whether the power of attorney is caught by s 8 of the Code. In the arguments before me, counsel for both the plaintiff and the defendants have proceeded on the basis that the legal relationship between the donor and donee of a power of attorney is that of principal and agent and that this relationship was created, in the present

case, by the power of attorney. Thus, both counsel referred me to the case of *Wee Tiang Peck v Teoh Poh Tin* [1995] 1 MLJ 446 where at p 454, the learned judge had this to say:

> A 'power of attorney' is defined as a formal instrument by which one person empowers another to represent him or act in his stead for certain purposes, see *Jowitt's Dictionary of English Law* (2nd Ed). Such instruments must be strictly construed according to well recognized rules. Once a power of attorney is created, the relationship of principal and agent arises between the donor and the donee of the power.

Boustead on Agency (15th Ed) has this to say on the creation of such an agency (at p 28):

> The relationship of principal and agent may be constituted:
>
> (a) by agreement, whether contractual or not, between principal and agent, which may be express or implied from the conduct or situation of the parties;
>
> (b) ...
>
> (c) ...

Again, I do not think there is any dispute between the parties that the power of attorney in our case constituted an express agreement between Nyanau and the first defendant whereby Nyanau appointed the first defendant as his attorney and agent on the terms set out in the power of attorney.

The next question to be asked is: did the first defendant (who is a non-native of Sarawak) acquire any rights or privileges over the said land by virtue of the power of attorney? It is the plaintiff's case that the first defendant had done so when he became entitled to exercise, under the terms of the power of attorney, the right to sell, charge, lease or otherwise deal with or manage the said land. According to the plaintiff, these are rights and privileges over native area land which the defendant — a non-native — would not be able to exercise or enjoy but for the power of attorney.

It is however the submission of counsel for the defendants that the first defendant had not acquired any rights or privileges over the said land by virtue of the power of attorney because the key word in s 8(a) of the Code is 'acquire', but the first defendant had not 'acquired' any rights or privileges over the said land; he had merely been authorized and appointed by the late Nyanau to do certain acts on his behalf in relation thereto. According to counsel for the defendants, the word 'acquire' appearing in s 8(a) must be interpreted to mean to become the owner of property. In support of his contention, counsel referred to *Supreme Court on Words and Phrases* by Surendra Malik (1993 Ed) wherein the following definitions of the word appear at pp 12, 13 and 16 respectively:

> 'Acquisition' — Constitution of India art 31(2) per Mukherjea J:
>
> Acquisition means and implies the acquiring of the entire title of the expropriated owner, whatever the nature or extent of that title might be. The entire bundle of rights which were vested in the original holder would pass on acquisition to the acquirer leaving nothing in the former ... *Charanjit Lal Chowdhury v Union of India* AIR 1951 SC 41, at p 54.

A 'Acquisition', 'acquire' — Punjab Sales Tax Act 1948, s 2(ff)

> Acquisition is the act by which a person acquires property in a thing. 'Acquire' is to become the owner of the property. One can, therefore, acquire a property either by voluntary or involuntary transfer. *Devi Das Gopal Krishnan v State of Punjab*, AIR 1967 SC 1895.

B 'Acquisition of property', Constitution of India, art 31(2) (after fourth amendment)

> Acquisition of property, in the context, means the extinction of the citizen's rights in the property and the conferment of the said rights in the State or the State owned corporation. *Govindlalji Maharaj v State of Rajasthan* AIR 1963 SC 1638, at p 1659.

C In my view, the meaning given to the word 'acquire' by the Courts in India when interpreting that word in the context of the Constitution of India or Revenue Enactments in India can be of very little value in construing the meaning of a provision in a Sarawak Ordinance or the same word when used in a Sarawak Ordinance in an entirely different context.

D From the submissions of counsel for the defendants, it is quite clear that he wishes to interpret s 8 of the Code by reference to a single word, namely 'acquire' and that he construes that word in its technical meaning. But he has not given any reason why that has to be so. We are here dealing with the Land Code which is a statute dealing with matters relating to the general E public. In this regard, this is what *Maxwell on Interpretation of Statutes* (11th Ed) has to say (at p 53):

> In dealing with matters relating to the general public, statutes are presumed to use words in their popular sense.

And on the matter of construction of statutes, this is what *Maxwell* says at F p 6:

> In construing wills and, indeed, statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnancy or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the word may be modified so as to avoid that absurdity and inconsistency, but G no further.

Accordingly, I would interpret the word 'acquire' in the context in which it appears as meaning no more than to 'gain' or 'obtain' or 'exercise' rights and privileges over native area land. By so interpreting that word, I do not think that construction would lead to any absurdity or H repugnancy or inconsistency with the rest of the provisions of the section or of the Code.

Having said that, it is my view that the approach I should take in resolving this issue is that adopted by the appellate court in *Idris bin Hj Mohamed Amin v Ng Ah Siew* [1935] MLJ 257, where the court was I called upon to interpret certain provisions of the Malay Reservation Enactment which prohibited the transfer or vesting of any right or interest of any Malay in reservation land to a non-Malay. In that case, the court first

determined the intention of the Enactment by reading the relevant sections of the Enactment and then examined the transaction that had been entered into between the appellant and the respondent as a whole before deciding whether there was an attempt to evade the provisions of the Enactment.

Reverting to the issue at hand, the provisions of ss 8 and 9 of the Code read as follows:

> Illegal for non-native to acquire rights or privileges over land of certain classes
>
> 8 Save as provided in s 9 —
>
> (a) a person who is not a native of Sarawak may not acquire any rights or privileges whatever over any Native Area Land, Native Customary Land or Interior Area Land;
>
> (b) any agreement, purporting to transfer or confer any such rights or privileges or which would result in such person enjoying any such right or privilege, shall be deemed to have been entered into for an illegal consideration; and, in particular but without prejudice to paragraph (d), any consideration which shall have been paid or furnished shall not be recoverable in any court nor shall any relief be afforded to any person claiming that any consideration promised has not been paid or furnished;
>
> (c) any person purporting to enter into an agreement to which paragraph (b) applies shall be guilty of an offence: Penalty, a fine of one thousand Ringgit and, in the case of a native offender, an additional fine of a sum equivalent to the value of any consideration which the court is satisfied has been received by that native offender or has been received by another person on his behalf or by his direction;
>
> (d) in any case in which a person is convicted of an offence under paragraph (b), the court may, if there is reason to believe that such person did not appreciate he was contravening paragraph (a) and had no reason to believe he was entering into a prohibited transaction, impose no fine and may also, if it has imposed an additional fine on a native offender and this paragraph applies to the non-native offender, order the payment to such non-native offender out of such fine of such sum by way of compensation to the non-native offender as it may deem fit in all the circumstances;
>
> (e) subject as aforesaid and to any remedy for the recovery of any fine imposed, the rights and privileges of any native shall not be adversely affected by any agreement to which paragraph (b) applies;
>
> (f) upon any conviction of an offence under paragraph (c), the court shall have power to order the eviction of any person, being a non-native or a person claiming under a non-native in possession or occupation of any land in relation to which the offence was committed, and may for such purpose by warrant addressed to any police officer order him to remove any such person as aforesaid;
>
> (g) a complaint of an offence under paragraph (c) may be made by a District Officer or a Superintendent or by any person generally or specially authorized in that behalf by the Public Prosecutor, but may not be made by any other person; and

(h) notwithstanding anything in any other written law, a court of a Magistrate of the First Class may exercise without any limitation the jurisdiction conferred on the court by this section.

Acquisition of land by non-natives

9(1) Section 8 shall not be deemed to prohibit the acquisition by any non-native of any land to which the provisions of that section apply, or of any rights or interest in or over such land —

(a) under or by virtue of any law for the time being regulating prospecting for minerals, including mineral oils, or the taking of forest produce;

(b) whenever such non-native has become identified with and subject to any native system of personal law;

(c) whenever such non-native has been issued with any permit relating to Native Area Land or Native Customary Land, issued under any rules made under s 8A of the former Land (Classification) Ordinance, 1948 [Ord No 19/1948], or issued under rules in that behalf under s 213, to the extent of the rights conferred by such permit;

(d) where such non-native has been deemed to be a native, by the Majlis Mesyuarat Kerajaan Negeri, by notification in the Gazette, in respect of any category of dealing over Native Area Land as stipulated in the notification;

(e) whenever such non-native has been issued with any licence under this Code to extract and remove earth, gravel, clay, stone, coral, shell, guano, sand or lime.

(2) For the purposes of this section, a person shall be deemed to have become identified with and subject to any native system of personal law upon any event upon which any written law provides he shall become so identified and subject, or if he is accepted by any native community as being identified with and subject to the system of personal law, of such community.

From my reading of the provisions of ss 8 and 9 of the Code, the intention of the Code, which cannot be any more plainly stated than in those two sections, is directed at prohibiting and preventing any person who is a non-native of Sarawak from acquiring any rights or privileges over native area land, except in the very limited circumstances permitted by the Code. And to prevent evasion, any agreement that is entered into which would result in such rights and privileges being enjoyed by a non-native is deemed to have been entered into for an illegal consideration and exposes the parties thereto to a penal sanction as well. In this regard, I draw attention to the decision in *Manang Lim Native Sdn Bhd v Manang Selaman* [1986] 1 MLJ 379 where Seah SCJ, speaking for the Supreme Court, had this to say about ss 8 and 9 of the Code at p 380:

> In our opinion, having regard to the provisions of s 9 of the Code, the prohibition contained in s 8 does not appear to be an absolute one but only a qualified prohibition, and it seems to us that any dealing in native area land by a native of Sarawak with a non-native may be allowed if it is specifically authorized by the Yang di-Pertua Negeri in Council.

I should point out, however, that it is not the case of the defendants here that they come within the limited exceptions mentioned in s 9 of the Code.

With regard to the actual transaction that had been entered into between Nyanau and the first defendant, a perusal of the power of attorney shows that the following powers were conferred on the first defendant in regard to the said land:

(a) to manage and look after Nyanau's right title share and interest in the said land and to make outlays in connection therewith;

(b) to assign, sell and dispose of the said land or part thereof at such price as the first defendant deemed reasonable and to execute the memorandum of transfer in favour of any purchaser;

(c) to receive the purchase price and to give a good receipt thereof;

(d) to mortgage, charge or raise loans with the said land and to execute all documents in respect thereof;

(e) to enter into a tenancy agreement or sublease of the said land and to receive and recover all rents;

(f) to pay quit rent and assessment for the said land;

(g) to bring or defend any legal proceedings touching on the said land;

(h) to apply for conversion of the land title to the said land or apply for subdivision, amalgamation or mutation of the same in such manner as the first defendant thinks fit, and to sign all documents in respect thereof, including to surrender the said land;

(i) to apply to remove earth from the said land.

The power of attorney also states that the powers conferred on the first defendant having been given for valuable consideration, the power of attorney shall be irrevocable except with the written consent of the first defendant.

Now, it will be recalled that it was the submission of counsel for the defendants that the first defendant had not acquired any rights or privileges over the said land by virtue of what was stated in the power of attorney because it was his submission that the power of attorney merely authorized the first defendant to do certain acts on behalf of Nyanau. I regret that I do not agree with this submission. Useful reference may once again be made to the case of *Idris bin Haji Mohd Amin* to ascertain what rights are normally regarded as comprised in the ownership of land. This is what Thomas CJ had to say about the matter at p 258:

> [A]lthough an out and out sale might not be effected, yet it might be possible to deal with land in a Malay Reservation so as to pass to a person not being a Malay all the rights which are comprised in the usual ownership, viz the rights to the rent and profits, the rights to let again and again, the right to determine the price to be received for a sale of the land and the person (subject only to his being a Malay) to whom the land should be sold.

Reverting to the facts of our case, it is very evident that those rights which are comprised in the usual ownership of the said land, viz the unrestricted right to sell the said land, the right to rent out or lease the said land, the right to charge or mortgage or raise a loan on security of the said land, the right to convert the title of the said land or to subdivide and surrender it, have been acquired or gained or obtained or passed to the first defendant — a non-native, and that has been made possible only by virtue of the power of attorney. I would also say that the execution of the power of attorney has resulted in those rights and privileges I have just mentioned being enjoyed and exercised by the first defendant. From the extent of the rights and privileges which have been granted over the said land under the power of attorney to the first defendant, it is very apparent that practically every right and privilege, except the nominal ownership in the said land, has been parted with by Nyanau. Thus, although the power of attorney states that the first defendant acts on behalf of Nyanau in exercising those rights, in reality they had passed to and were exercised and enjoyed by the first defendant. The power of attorney was, in my view, a colourable devise entered into to facilitate an evasion of the Code and in fact deemed to be entered into for an illegal consideration under s 8(b) of the Code.

In an attempt to show that there was nothing wrong with the first defendant being granted a power of attorney over native area land, counsel for the defendants referred me to several cases where dealings or arrangements entered into between the owners of native area land or Malay reservation land on the one part, and non-natives or non-Malays on the other part have been upheld by the court. I must say, however, that those cases are of no assistance to the defendants here as those cases are readily distinguishable.

In *Law Tanggie v Untong ak Gantang & Anor* [1993] 2 MLJ 530, a non-native of Sarawak purchased a native area land from a native owner. As the non-native was then under the age of majority and had yet to be declared as a native, he arranged for a native to act as his nominee and trustee to hold the said land. The court held that the arrangement was not contrary to the provisions of the Code as there was no intention to evade the provisions of the Code as the arrangement was made subject to the provisions of the Code, ie the non-native being declared a native and attaining his age of majority. Needless to say, such a situation does not obtain in our case.

In *Dato' Haji Nik Mahmud bin Daud v Bank Islam Malaysia Bhd* [1998] 3 MLJ 393, a Malay owner of reservation land entered into an arrangement with a bank licensed to carry on Islamic banking business in respect of 25 lots of reservation land whereby the owner would sell the lands to the bank which would then resell the lands to the owner at a profit. The lands were then to be charged to the bank to secure a loan. It was necessary to enter into the above arrangements as the loan was granted in accordance with the Islamic banking concept of Al Bai Bithaman. The owner subsequently sought an order to declare null and void the charges on the grounds that the arrangements entered into between the parties contravened the provisions of the Malay Reservations Enactment 1930 of Kelantan which prohibited any transfer or transmission or vesting of any

right or interest of a Malay in reservation land to a non-Malay. The learned judge found that the arrangements entered into did not contravene the provisions of the Enactment because despite the sale and purchase agreements, the Malay owner remained the registered proprietor of the lands throughout and as there was no intention to transfer ownership, the provisions of the Enactment had not been transgressed as there was no attempt to evade the Enactment. That is not the situation in our case. Here, the power of attorney was clearly intended as a devise to evade the provisions of the Code.

In *Wee Tiang Peck v Teoh Poh Tin* [1995] 1 MLJ 446, the court held that even though the power of attorney granted to the attorney did concern rights and interests in land, it did not run foul of the provisions of the Malay Reservation Enactment because under the Enactment there could only be a 'vesting' where the right or interest is indefeasibly vested in a person so as to form part of his property, but the power of attorney in that case did not have the effect of doing so. In our case, the question of 'vesting' is quite irrelevant.

It follows from what I have said above that it is my finding that the power of attorney was entered into in contravention of s 8 of the Code and is of such a nature that, if permitted, would defeat the provisions of s 8 of the Code by reason whereof it is unlawful and void under s 24 of the Contracts Act 1950.

Having found so, I now go on to consider the next question that arises for consideration, namely, is the plaintiff's claim for relief barred by limitation? I have already in an earlier part of this judgment set out the contention of the defendants on this issue and the relevant provisions of items 91 and 93 of the Sch to the Limitation Ordinance (Cap 49) which the defendants say the plaintiff's action is caught by. However, it is the submission of counsel for the plaintiff that the defendants have not expressly pleaded limitation in opposing the plaintiff's claim and so should be prevented from raising it. I do not think counsel for the plaintiff is correct in his contention. In *Re Estate of Choong Lye Hin, Decd; Choong Gim Guan v Choong Gim Seong* [1977] 1 MLJ 96 the Federal Court held that the Limitation Ordinance need not be mentioned by name but it would be sufficient for the defendant to say that the claim is time barred by limitation or statute barred. I should point out that no pleadings were delivered in this action as the plaintiff commenced her action herein by way of an originating summons. However, in his affidavit affirmed on 18 September 2000 and filed on 19 September 2000, the first defendant has in para 15 thereof stated that the plaintiff's action is statute barred. In my view, that was sufficient to entitle the defendants to take the point on limitation in these proceedings.

Reverting now to the question whether the plaintiff's claim is barred under item 91 and/or 93 of the Sch to the Limitation Ordinance, it is my view that it is not because the plaintiff's action herein is not for the rescission of a contract and neither does she pray for such relief. Neither is her claim for 'compensation for breach of any contract, express or implied, not in

writing' and, therefore, item 91 and/or 93 can have no application to the plaintiff's claim.

In my judgment, the plaintiff's action comes under item 112 of the Sch which covers suits:

> For possession of immovable property or any interest therein not hereby otherwise specially provided for

The time limited for bringing a suit to which item 112 applies is 12 years and begins to run:

> when the possession of the defendant becomes adverse to the plaintiff.

Although the plaintiff seeks the various declarations mentioned above, her action is essentially for possession of the said land which is one of the reliefs prayed for. Assuming that possession of the said land became adverse to the plaintiff from the date of the execution of the power of attorney on 16 October 1991 because that was when the first defendant began to exercise and enjoy rights and privileges over the said land, limitation would set in only on 16 October 2002. This action having been commenced on 21 July 2000, it was brought well within the time allowed.

Before concluding, I wish for completeness to deal with several other matters raised during arguments by counsel for both parties. It will be recalled that it is the defendants' case that the said land ceased to form part of the assets of the estate of the late Nyanau from 8 June 1997 because that was the day the first defendant signed the memorandum of transfer in favour of Regina Mado who subsequently used it for the purpose of lodging a caveat against the said land, claiming that she had acquired a beneficial interest therein. A copy of Regina Mado's caveat as well as the memorandum of transfer was exhibited to the first defendant's affidavit affirmed on 11 August 2000. A perusal of the memorandum of transfer shows that ad valorem stamp duty had not been paid on it.

Counsel for the plaintiff therefore objected to the defendant's reliance on the memorandum of transfer in these proceedings. During an adjournment in the course of these proceedings, the stamp duty on the memorandum of transfer was paid and the document duly endorsed with a note that a penalty had been imposed for late stamping. Counsel for the plaintiff maintains, however, that the document remains inadmissible. I regret I do not agree with that submission. In *Malayan Banking Bhd v Agencies Service Bureau Sdn Bhd & Ors* [1982] 1 MLJ 198, the Federal Court held that an unstamped document could be received in evidence on payment of the penalty provided under s 51(1)(d) of the Stamp Act 1949.

Another matter which was raised by counsel for the defendants related to the fact that the plaintiff had in her affidavits, averred to matters about which she could not possibly have any personal knowledge about. It will be apparent from this judgment that I have not referred to nor relied on any of the matters which counsel for the defendants complained about.

In the result, I allow the plaintiff's claim with costs and grant her the declarations she seeks in prayers (i), (ii) and (iv) of the summons. I also

make the orders sought in prayers (v) and (vi) against the second defendant but not the order for demolition as there is no reliable evidence that it was the defendants who put up the shed complained of. A

Order accordingly.

Reported by D Sivalingam B

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